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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10.027.261	12.20.2001	Jeffrey E. Fish	KCX-482 (16683)	8928
22827	7590	10.20.2003		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER NOLAN, SANDRA M	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 10.20.2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,261	FISH ET AL.	
	Examiner	Art Unit	
	Sandra M. Nolan	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,13,14,23 and 32-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-12,15-22 and 24-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4 + 5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1-41 are pending.

Election/Restrictions

2. Applicant's election without traverse of Group I, claims 1-31 in Paper No. 7 (the response dated 08 September 2003) is acknowledged.

It is noted that the election of woven or knitted substrates of elastomeric material, as recited in claims 1-3, 6-12, 15-22 and 24-31 was with traverse. However, no argument, except for an assertion that several claims are generic, was presented in Paper No. 7.

Accordingly, the election of woven or knitted substrates of elastomeric material is being treated as an election without traverse.

The examiner notes that claims 13 and 14 read on films, which are among the nonelected species. Therefore, claims 13 and 14 are nonelected and withdrawn.

The nonelected claims are claims 4, 5, 13, 14 and 32-44.

This application contains claims 4, 5, 13, 14 and 32-44 drawn to invention(s)/species nonelected with traverse in Paper No. 7.

A complete reply to any final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Information Disclosure Statement

3. The information disclosure statements (IDS's) submitted on 24 June 2002 (Paper No. 4) and 08 May 2003 (Paper No. 5) were considered by the examiner.

Please note that:

(1) Reference citations listed on US patents list number, issue date and patentee in each line, in that order.

(2) Undated materials are not included in reference citation listings. Therefore, the last item in Paper No. 4 was crossed off.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-3, 6-12, 15-22 and 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhn (US 3,935,355) in view of Bowen (US 5,792,213).

Kuhn teaches wrappers applied to one or more bodies , which stretch after they are applied (abstract). The wrappers have outer layers made of woven elastic **4** (see Figure 1 and col. 4, line 66 through col. 5, line 9). Inside the outer layers are reactive layers, such as adhesive **3** and hardener **5** (Figure 1). The wrappers include an internal

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rupturable layer 8 (Figure 1, col. 7, line 65 through col. 8, line 2). The wrappers operate by rupturing layer 8 in response to stretching of the entire wrapper (abstract).

It fails to teach a rupturable structure between liquid reactants.

Bowen teaches a therapy pack used to mix endothermic or exothermic reactants (col. 3, line 63 through col. 4, line 4). The Bowen pack has folds in outer walls (see 16, 18, 20 and 22 in Figure 1) and a weak point 32 in the seam 24, 26 between reactants, which ruptures causing them to mix (abstract; col. 2, lines 23-39). The outer surface is made of flexible material (abstract). The Bowen pack is activated by pressing on, kneading, twisting the outer compartment or by pulling on both ends thereof so that the liquids merge (col. 2, lines 23-34).

Bowen's seam operates like applicants' inner substrate.

The two patents are analogous because they both deal with packaged materials in which reactive materials interact.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the liquid reactants of Bowen, along with Bowen's folded outer surface, in order to produce a package in which the outer surface could be stressed by the application of pressure to rupture the inner barrier or seam and cause liquid reactants to mix and react.

The motivation to employ the liquid reactants and folded outer layers of Bowen is found at col. 2, lines 23-34 of Bowen, where several ways of activating the Bowen pack are taught.

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It is deemed desirable to make stretchable wrapping structures for use on bodies that can be activated by several means, in addition to stretching, in order to facilitate use by consumers.

The selection of elastomeric materials having suitable elasticity, as called for in applicants' claims 9-11, 26 and 27, is deemed a matter of optimization, which optimization would be obvious. See in re Peterson, 65 USPQ2d 1379 (Fed. Cir 2003).

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

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